

REMARKS**I. Interview with the Examiner**

Applicants and the undersigned attorney are appreciative of the Interview that took place on June 10, 2004 as summarized by the Interview Summary of record.

II. Status of Application Prior to RCE

A final Office Action issued on November 19, 2003. At the time of issuance of the final Office Action, claims 3-5, 12-18 and 20-54 were pending. A four way restriction requirement was issued after Applicants' communication, mailed September 12, 2003. Specifically, the claims were divided into the following groups:

- I. Claims 3-5, 21, 23, 24, 34-36 and 42-44: drawn to tartrate salt and pharmaceutical compositions;
- II. Claims 12-15, 20, 25-30, 37-41 and 45-49: drawn to various methods of use;
- III. Claims 16-18, 21, 31-33 and 50-53: drawn to a process of preparing tartrate salt; and
- IV. Claim 54: drawn to a product-by-process of preparing tartrate salt.

A provisional election was made without traversal to prosecute the invention of Group I. The claims in Groups II-IV were withdrawn from further consideration as being drawn to a non-elected invention.

The claims of Group I were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for the reasons set forth in the final Office Action at page 8. It is alleged that claims 4, 23 and 34-36 are duplicates of claim 3 and that claims 21, 24 and 42-44 are duplicates of claim 5.

The claims of Group I were also rejected under 35 U.S.C. §103(a) as being unpatentable over the PCT publication No. WO 95/11891 ("Evenden") for the reasons appearing on pages 9-10 of the final Office Action.

III. Claim Amendments

As stated in the Interview Summary, the undersigned attorney and the Examiner had a telephone discussion subsequent to the Interview to discuss the patentability of tartrate salt species. Applicants agree at this time to proceed with the allowance of the species of claims 3-4. The Examiner is requested to rejoin withdrawn method of use and process claims which depend from or otherwise include all the limitations of the allowable claims 3-4.

Upon entry of this Amendment, claims 3-5, 12-18, 21 and 44 are pending. Claims 1, 2, 6-11, 13, 19, 20, 22-43 and 45-54 are canceled.

Support for amended claims 16 and 17 is provided by the specification at page 6, lines 4-10. Support for amended claim 18 is provided by original claim 18. Support for amended claim 21 is provided by original claim 6. Support for amended claim 44 is provided by the specification at page 3, lines 21-30.

Applicants submit that none of the claim amendments was done in acquiescence of any objection or rejection relating to the patentability of the canceled claims or deleted embodiments. Rather, Applicants wish to advance the present application to allowance so that Applicants can enjoy the benefits, without delay, conferred by a U.S. patent for allowable subject matter.

Applicants reserve the right to file one or more continuation applications directed to embodiments canceled or deleted by the claim amendments set forth herein.

No new matter is introduced by any of the claim amendments.

IV. Claim rejections – 35 U.S.C. §112

The Examiner is respectfully requested to reconsider and withdraw the §112 rejection in view of the claim amendments and remarks herein.

V. Claim rejections – 35 U.S.C. §103

Applicants submit that the pending claims are patentable over the cited prior art reference (Evenden) in view of the support provided by the specification, the reasons of record and the agreement that was reached during the Interview.

Withdrawal of the §103 rejection is requested.

CONCLUSION

Applicants submit that pending claims 3-5, 12-18, 21 and 44 are in condition for allowance, which action is earnestly solicited. The Commissioner is hereby authorized to charge Deposit Account No. 23-1703 in the event that any fee is required in connection with this communication.

Dated: 7 July 2004

Respectfully submitted,



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Attachment

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